

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/07/2002

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Crl.O.P.No.12001 OF 1997

and

Crl.M.P.No.4272 of 1997

1.The Institute of Cardio Vascular
Diseases, by its Director
Dr.K.M.Churian (A-1)

2.Dr.K.M.Churin (A-3)

3.Dr.S.Rajan (A-4)

4.Dr.R.K.Kalyan Singh (A-6)

5. Dr.V.Satyanarayana Prasad (A-8) .. Petitioners.

Versus

Mrs.Sarah Mathew .. Respondent.

!For Petitioners: Mr.C.Ramakrishnan SC for
Mr.S.A.Rajan

^For Respondent: Mr.R.Ganesan

Prayer: Petition filed to quash the proceedings in C.C.No.3354 of 199 7 on
the file of the XVII Metropolitan Magistrate, Saidapet.

:O R D E R

It is rather unpleasant for me to start this judgment stating
that the root cause of this litigation before this Court for a period of 5
years was mainly due to the callous and lethargic attitude of the then XVII
Metropolitan Magistrate who has slept over the matter without passing any
judicial order (either dismissing it or taking cognizance) inspite of the
complaint being filed within the period of limitation and to a certain extent
due to the complainant. But I cannot help saying so. The fate of the case
has to be decided now whether the case survives the period of limitation or

not; but not on the facts where the complainant accuses the medical practitioners for causing the death of her husband due to negligence and the medical practitioners claim that they are not responsible.

2. It may not be necessary for me to go into the details of the factual situation agitated by the respective parties in the private complaint filed in C.C.No.3354 of 1997 on the file of the XVII Metropolitan Magistrate, Saidapet, since the complainant claims that her husband died due to the negligent act of the accused who belong to the medical profession and the accused in their counter, claim that they were not responsible for the said act and there are materials to substantiate their claim. Inasmuch as the matter relates to the question of facts which are disputed between the parties, this Court felt that it may not be justified to consider such matters hearing an application under Section 482 Cr.P.C. Therefore, the learned counsel for the petitioners confined his argument only to the point of law

involved in this case, more specifically to say, whether the prosecution would survive when the learned Magistrate has taken cognizance of the same after the period of limitation.

3. In the above circumstances, it would be suffice to state as below for completing the narration of the prosecution case. The sum and substance of the complaint are as follows:

a) The complainant is the wife of the deceased Mathai Mathew.

The deceased Mathai Mathew, a diabetic patient was referred by one Dr.Roy J.Mukkuada of Kerala, with a letter containing the History of the patient to A-2 and A-3 who are the Consultant Cardiologist and Chief Surgeon in the Institute of Cardio Vascular Diseases namely the first accused herein.

b) Accordingly, on 5.11.1993, the complainant accompanied her husband (the deceased Mathai Mathew) to the First accused Hospital, where A-2 attended to the deceased by carrying out various medical tests. Thereafter, the deceased was admitted in the Hospital on 7.11.1993, upon the compulsion made by the second accused.

c) On 8.11.1993, the second accused performed a Cardiac Catheterisation Test without taking any precaution and on the basis of the result, the second accused recommended a Coronary Artery Bypass Graft (CABG). The claim of the complainant is that she had brought her husband only for check up, but it was the second accused who fraudulently represented that the patient has to undergo the By-pass surgery, though being elective.

d) The further case of the complainant is that at the time of admission, the condition of her husband was normal; that knowing fully well that the deceased was a diabetic patient, the second and third accused with the assistance of fourth and fifth accused, conducted the By-pass Surgery with utter negligence and recklessness, without bringing the Diabetes Mellitus under control by stabilising the blood sugar with insulin, which resulted in heavy bleeding. Further it is seen that the deceased was discharged from the hospital on 20.11.1993, with the fever and the persistent discharge of pus from the wound.

e) On 21.11.1993, the complainant's husband had very high temperature and felt difficult in swallowing even liquids. Hence on 22.11.1993, he was again got admitted in the hospital in a dehydrated

condition. The complainant also states that various tests were subsequently carried out from 22.11.1993 to 25.11.1993; that the third accused was negligent in attending to the patient and thereby caused the death of her husband namely Mathai Mathew.

4. The above claim of the complainant, paved the way for filing this present petition by the petitioners, refuting the above claims as below.

a) In support of the above, the third accused on behalf of the other petitioners herein, who are also medical practitioners, filed an affidavit, wherein he has set out the objectives of the Mission elaborately. He further states that the patient who himself was a Dentist (Mathai Mathew) was not only a diabetic patient but was also an alcoholic for nearly 20 years, according to the informations furnished by his family doctors.

b) In addition to the above he would also state that the complainant herself was a qualified medical practitioner and she was present throughout the treatment with the patient until he was discharged; that the operation was successful and after the necessary corrective operation the patient has regained his health and on 20.11.1993 after the next post operative operation, he was discharged; that again on 22.11.1993 the patient was admitted in the hospital, since he was not able to swallow anything; that he was administered with the oral medicine, particularly for his earlier diabetic condition and in spite of the best medical attention given to him, he died due to scepceemia resulting from uncontrolled diabetic and jaundice; that the summary of the cause of the death was prepared and the body was handed over to his wife Sarah Mathew and that they had not heard anything either from the complainant or anything from their relation until they received a legal notice and finally a summons from the Court stating that they have committed an offence under Section 304 A IPC.

5. As stated earlier, I am not going to the facts and the circumstances leading to the cause of death and the other related issues but, I am constrained to decide only the admitted issues of both sides.

6. Now coming to the admitted facts, it is an undisputed fact that the patient died on 2.12.1993, more specifically to say that it is date on which the knowledge of offence has come into existence. Further the following are the entries found in the docket sheet written by the learned XVII Metropolitan Magistrate, Chennai.

27.11.1996: Complaint Filed.

Check and Call on: 13.12.1996

13.12.1996: Complainant sworn statement recorded in part.

20.12.1996: Complainant present XVII M.M is on R.H

Call on 7.1.1997

Call on: 12.02.1997

07.01.1997: Complainant present - Complainant statement under Section 202 Cr.P.C. Completed fully for further examination

256 petition filed 2.2.1997

Complainant absent petition Under Section 256 filed – Allowed after request adjourned 13.3.1997

13.03.1997 Complainant absent at request adjourned to
22.4.1997 – Petition filed Under Section 256 Cr.P.C
(same reason as stated on 12.2.1997)

22.04.1997: Complainant present on petition and at
request for additional witness call on 12.6.1997 to give
witness.

12.06.1997: Complainant present – Witness present and
examined as 2nd witness – Orders 13.6.1997.

13.06.1997: The witnesses were examined on complainant
side. To support her complaint a doctor of M.B.B.S (M.S)
(Orthopaedics) who is known about the operation was also
examined has stated that the patient died of
shock, septicemia and uncontrolled diabetic and also
premature discharge from the hospital, there
is a prima facie case and the case is taken on
file under Section 304(A) I.P.C. - Send summons to
accused 1 to 8 on process – Call on 11.7.1997.

7. As already stated, the only point that has now been winched to the
fore in this Court is whether the prosecution is barred by limitation.

8. The learned counsel for the petitioners at first would submit that
the date of death is 2.12.1993 and the date of filing of the complaint is
27.11.1996 and the Magistrate has taken cognizance of the offence only on
13.6.97. He further took me through the endorsement made by the learned
Magistrate found in the docket sheet, wherein it is stated as follows:
"there is a prima facie case and hence the case is taken on file under
Section 304-A IPC – Send summons to accused 1 to 8 on process – Call on
11.7.1997."

9. In furtherance to the above, the learned counsel went on further
stating that the offence under Section 304-A is punishable for a period of two
years and the period of limitation as mentioned in the schedule of the Cr.P.C
is 3 years. In short, he rested his argument to the effect that when the date
of death is on 2.12.1993, more specifically to say the date on which the
commission of offence has come to the knowledge of the complainant, the
Magistrate ought to have taken cognizance on or before 2.12.1996, but it is
only on 13.6.1997, cognizance has been taken and consequently, it is barred by
limitation.

10. To substantiate the above proposition he took me through the

relevant provisions viz., Section 468 Cr.P.C, which reads as follows:

Bar to taking cognizance after lapse of the period of limitation:

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in subsection (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years;

(3) For the purpose of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with more severe punishment or, as the case may be, the most severe punishment.

Accordingly he submitted that whatever be the date on which the complaint has been filed, it is the date on which the Magistrate has taken cognizance that has to be considered. A reading of the Section would indicate that emphasis is on the word "taking cognizance" and not in relation to the word "filing of the complaint".

11. In the light of the arguments made above the learned counsel for the petitioners has relied on a decision of this Hon'ble Court reported in *Aru Vs. State* rep. by S.I of Police, Pothanur Police Station, Coimbatore. (1993 LW Cri. 127), wherein it is held as follows:

3. Under S.468, Cr.P.C there is a bar for taking cognizance of offences contemplated therein after lapse of period of limitation. Under S.468(2)(c), the period of limitation fixed is three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years. S.468(3) makes it abundantly clear that for the purpose of reckoning the period of limitation in relation to offences which may be tried together, it shall be determined with reference to the offence which is punishable with more severe punishment or, as the case may be, the most severe punishment. On facts detailed earlier, learned trial Magistrate ought to have taken cognizance of this group of offences before the expiry of three years from the date of commission of the offences, or where the commission of the offences, was not known, from the first day on which such commission such offences had come to the knowledge of the person aggrieved or the police officer. There cannot be any dispute that even on the date of commission of offences, the respondent had become aware of the same, since the first information report was registered on the very same day. It is apparent, that for an occurrence which had taken place on 27.8.1997, of which the respondent had knowledge on the same day, final report ought to have been filed on or before 26.8.1990, to facilitate cognizance by the Magistrate within the period prescribed under S.468, Cr.P.C. Obviously, that was not done, for the final report was presented on 8.10.1990 before the Magistrate and cognizance was taken on 12.10.1990

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5..... The question to be considered is whether mere presentation of

a final report before the Magistrate concerned will be sufficient to save limitation contemplated under S.468 Cr.P.C or the date of reckoning limitation must relate to cognizance being taken by the Magistrate.

6. S.468 Cr.P.C is very specific that except as otherwise provided elsewhere in the Code, no court shall take cognizance of an offence of the category specified in sub-S.(2), after the expiry of the period of limitation. Apparently, the bar contemplated must be correlated to taking cognizance of an

offence by a Court. If that be so, cognizance had been taken by the Magistrate only on 12.10.1990, nearly 1 ½ months after the prosecution was barred by limitation.

12. To support to the above, there is a decision of Supreme Court reported in Krishna Pillai Vs T.A.Rajendran and another (1990 SCC (Crl) 646), which clearly indicates the difference between the words " taking cognizance" and "filing of the complaint". This is case which comes under the Child Marriage Restraint Act, 1929. However, Section 9 of the Child Marriage Restraint Act reads as follows:

"No court shall take cognizance of any offence under this Act after the expiry of one year from the date of which the offence is alleged to have been committed".

A reading of this Section is identical with the language used in Section 468 IPC and in the said case though the complaint had been filed within a year from the commission of the offence, the Court has taken cognizance of the offence only subsequently and consequently, the Supreme Court has held that it is barred by limitation. Therefore according to the learned counsel for the petitioners, the prosecution has to be necessarily quashed.

13. In continuance to the submissions made, the learned counsel for the petitioners also relied on a division bench decision of our High Court reported in Kathamuthu V. Balammal (1987 Crl.L.J. 360). Though the case cited hereinabove actually relates the question whether condonation of delay has to be made prior to taking cognizance or after, it ideals in extenso with the provisions of Section 468 and 473 Cr.P.C and ultimately in Paragraph-16, they have held as follows:

16. For all the discussions made above, we hold that S.468(1) Cr.P.C which prohibits every court from taking cognizance of the categories of offences in respect of which the periods of limitation have been prescribed under sub-sec.(2) of that section, after the expiry of such periods of limitation, vests a valuable right in the persons sought to be prosecuted. The main object of such a prohibition is to see that parties do not resort to dilatory tactics and to shut out belated and dormant claims in order to save the accused persons from unnecessary harassment but to seek their remedies within the statutory periods fixed by the legislature.

14. Per contra, the argument of the learned counsel for the respondent is in a twofolded way, firstly he would state that cognizance has been taken within the period of limitation, that is cognizance has been taken on the date of filing the complaint i.e on 27.11.1996 itself, which is well

within the time stipulated. Secondly that Section 46 8 Cr.P.C has to be interpreted in such a way as to, when the complaint has been filed within the period of limitation, cognizance can be taken at any time.

15. Now taking the first limb of the argument and see whether cognizance has been taken on 27.11.1996 itself. The counsel for the respondent would argue that the moment the complaint has come to be filed and any note has been put up by the Magistrate, it would indicate the act of cognizance being taken. On going through the docket sheet it is found that the complaint has been filed on 27.11.1996 and the learned Magistrate has made an endorsement as follows:

Check and call on

According to the counsel, this clearly indicates that the Magistrate has taken cognizance.

16. In order to substantiate the same, the learned counsel for the respondent relied on the decision reported in R.R.Chari Vs. The State of Uttar Pradesh (AIR 1951 S.C 207) wherein it has been held that the Magistrate must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, namely proceedings under Section 200..."

He also relied on a decision reported in Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal (AIR 1959 SC 1118) wherein their Lordships have held at Paragraph 8 as follows:

"Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under S.200 and subsequent sections of Ch XVI, it can be positively stated that he had applied his mind and therefore had taken cognizance".

Reliance was also placed on the decision reported in Gopal Das Sindhi and others Vs. State of Assam and another (AIR 1961 SC 986) wherein at paragraph 7 their Lordships have held that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because S.200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of filing of the complaint.

He further went on to rely upon a decision of the Supreme Court reported in Jamuna Singh and others Vs. Bhadai Shah (AIR 1964 SC 1541) wherein at paragraph 10 it has been held that the very fact that the Magistrate took action under S.200 of the Code of Criminal Procedure, that he had taken cognizance of the offences mentioned in the complaint, it was open to him to order investigation only under S.202 of the Code of Criminal Procedure and not under Section 153(6) of the Code.

Likewise, Nirmaljit Singh Hoon Vs. The State of West Bengal AIR 19 72 SC 2639, Devarapalli Lakshiminarayana Reddy and others Vs. V. Narayana Reddy and others (AIR 1976 SC 1672, Tula Ram and others Vs. Kishore Singh (AIR 1977 SC 2401), and finally the judgment reported in Narsingh Das

Tapadia Vs. Goverdhan Das Partani and anth (2000 (V) CTC 5 5), were referred by the learned counsel for the respondent.

It is true that the Apex Court in all the judgments cited above has held that there must be some indication of the Magistrate having taken some action on the complaint under Section 200 Cr.P.C and then only it means cognizance has been taken.

17. Further it is pertinent to note that almost the facts of all the cases referred above, relates to fact of either the complaint being sent for investigation under Section 156(3) Cr.P.C or search warrant has been issued on the basis of a complaint. In such circumstances, their Lordships have said cognizance have not been taken when it has been sent for investigation under Section 156(3) Cr.P.C, or in the alternative a search warrant has been issued. But what they made clear is that when the Magistrate applies his mind and initiate proceedings under Section 200 Cr.P.C then he is said to have taken cognizance. I do not think there is any dispute regarding this issue even by the learned counsel for the petitioners. By merely citing these decisions, the learned counsel for the respondent is able to show only as to what cognizance means, especially because of the fact that cognizance has not been defined anywhere in the Code. But what remains is as to how the learned counsel would say that these decisions apply to the facts of the present case wherein on 27.11.1996, the Magistrate has just made an endorsement as Check and call on. It also does not mean that it proposes to take action under Section 200 Cr.P.C or anything else.

18. Be that as it may, in the decision of the constituent Bench of five Judges reported in A.R.antulay V. Ramdas Srinivas Nayak (1984 2 SCC 500), their Lordships have categorically held at Paragraph 31 as to what cognizance means, as follows:

"When a private complaint is filed, the Court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Cr.P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the Court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the Court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the Court."

Therefore, it is crystal clear that only when the Court has applied its mind judicially on merits, whether a case is made out for issuing process, cognizance is said to have been taken. Coupled with this fact, when we see the endorsement made by the learned Magistrate in the complaint, only on 13.6.1997 the Magistrate has made the endorsement to the effect that "there is a prima facie case and hence the case is taken on file under Section 304-A IPC - Send summons to accused 1 to 8 on process". Accordingly, I have no hesitation to hold that the Magistrate has taken cognizance only on 13.6.1997.

19. Apart from the discussions made, the decisions cited by the learned counsel for the respondent also reveals that there must be some indication of the Magistrate applying his mind when he takes cognizance of the

offence. A compound reading of the decisions with the decision of the Supreme Court in A.R.antulay's case clearly establishes that the Court should have applied its mind judicially and should take action against the accused. In the present case when an endorsement has been made as to Check and call on, by no stretch of imagination can it be said that the Magistrate has applied his mind. On the otherhand, it appears that as if the Magistrate has just passed on the job to the staff to check whether the complaint, Vakalat and other things are in order. Therefore, so far as the first argument advanced by the learned counsel for the respondent namely that the cognizance has been taken on 27.11.1996 cannot be accepted.

20. The second limb of the argument is to the effect that Section 468 Cr.P.C has to be interpreted in such a way that if the complaint has been filed within the period of limitation, cognizance can be taken at any time. Again at the risk of repetition I have to refer to the decision of High Court reported in Aru Vs. State rep. by S.I of Police, Pothanur Police Station, Coimbatore (1993 L.W. CrL. 127), wherein His Lordship Mr.Justice Arunachalam has clearly stated that the emphasis is on the word taking cognizance and not on the date of filing of the complaint. Further at paragraph 6 and 7, His Lordship has set out the difference between the language used under Section 468 and 142 of the Negotiable Instruments Act wherein the former emphasis was on the word cognizance being taken, while the latter was on the presentation of the complaint and finally has held that Section 468 has to be read in order to mean that the Magistrate should have taken cognizance within the period of limitation and not thereafter. In support of His observations, His Lordship has relied on the decision reported in Krishna Pillai Vs. T.A.Rajendran and another (1990 SCC (Cri) 646, wherein it has been clearly held that filing of a complaint in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Therefore, it is needless to say that Section 468 Cr.P.C cannot be read to mean that if the complaint has been filed within the period of limitation, cognizance can be taken at any time.

21. The learned counsel for the respondent in support of his argument, placed before me a decision of Bombay High Court reported in Kamal H.Javeri and another Vs. Chandulal Gulabchand Kothari and another (1985 CrL.L.J. 1215), wherein it has been held that Section 468(2) Cr. P.C would come into operation only when the complaint has been filed subsequent to the period of limitation.

With great respect to the learned Judge, I would state that this is a case where hypothetical questions has been taken into consideration and that in a case where a complaint has been filed within the time and the Court takes its own time to take cognizance, the complainant should not be the sufferer. It is on that score, the learned Judge has construed Section 468 Cr.P.C.

22. Similar to the context above, certain other authorities have been placed before this Court by the learned counsel for the respondent, reported in Zain Sait Vs. Intex-Painter, Interior Decorators, Civil Workers, Maintenance Workers and Water Profors and others (1993 CrL. L.J.2213),

Dr.Anand R.Nerkar Vs. Smt.RahimbiShaikh Madar and others (1 991 CrL.J.557), Ahalya Paikarai Vs. State of Orissa and Ors. (1994 Vol 3 crimes 222). It will not be out of place for me to state with due respect to the learned Judges that all these decisions cited here, pertains to the hypothetical questions and the decision has been arrived at with the objective that the complainant should not suffer on account of the delay on the courts and all the judgments are of other High Courts.

23. With due respect, when there is a direct decision of our High Court, I cannot but follow the decision of our High Court. Further, the Apex Court in Krishna Pillai's case has clearly held that filing of a complaint in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Relying on the above decision, I feel that it is safe to conclude that mere filing of a complaint does not amounts to taking cognizance. It is also the admitted case in the said decision that the complaint has been filed within one year i.e within the period of limitation but the Court had taken cognizance of the offence subsequently and their Lordships of the Apex Court have held that even though complaint has been filed within the period of limitation, cognizance has been taken subsequently and hence the prosecution cannot survive. Obviously, it will not be out of place for me to state that it is a well-founded principle, The Parliament knows what it does. So, unless there is an ambiguity in the Section, it cannot be interpreted in any other manner except in the one and only possible way whether the cognizance has to be necessarily taken within the period of limitation under Section 46 8 Cr.P.C and otherwise the Court has to follow the subsequent provisions of law in condoning the delay.

24. As a matter of fact, with regard to the question that whether he should be made to suffer for the mistakes committed by the Courts, when he has filed the complaint within the time stipulated, the learned counsel for the respondent relied on a Division Bench judgment of this Court reported in A.Vinayagam and 3 others Vs. Dr.subash Chandran and another (2000 (I) CTC 225), wherein their Lordships have held at paragraph 22 that the complaints therein were filed in time. However, the Magistrate has returned the papers to the complainants by making some endorsements thereupon. In this case, their Lordships have held that such endorsements cannot be said to be judicial orders, but they could be only administrative orders. They have further held that any judicial order that could have been passed by the Magistrate, at that stage, only after examining the complainant or his witness and without that the Magistrate has not jurisdiction to pass orders. Finally, it has been held that the return of such complaints cannot be termed as a judicial order and the same cannot be challenged in the Court of law.

Though this decision has been relied upon by the learned counsel for the respondent, it is clearly against him. Firstly, their Lordships in the said judgment have held that only when he has examined the witness, he can pass a judicial order. Merely making an endorsement, in the case on hand as to Check and call on, cannot be termed to be a judicial order. Secondly, the decision on which he had relied on is one under the Negotiable Instruments Act, whereagain the emphasis is only on the date of the filing of the complaint and consequently if the complaint has been filed within the time limit and after cognizance has been taken subsequently, it does not affect the

survival of the prosecution. But that is not the law in so far as Section 468 Cr.P.C is concerned.

25. Having discussed elaborately and have come to a conclusion that the prosecution is no doubt barred by limitation, I would also like to meet the argument of the learned counsel for the respondent as to whether he should be made to suffer when the Magistrate has taken cognizance at a later date after the expiry of the limitation, when he has filed the complaint within the time specified.

26. In fact the learned counsel for the respondent would represent that when he presented the complaint to the Magistrate, he was questioned with regard to period of limitation and when the same was answered to that it is likely to over on 2.12.96, the learned Magistrate has questioned him as to why he has approached the Court so late. From the above, it is clear that the learned Magistrate was conscious of the period running out of time and instead of passing any judicial order, namely taking cognizance, had only made an endorsement as Check and call on.

27. In the said context, I would also like to refer to the decision of the Supreme Court reported in Surinder Mohan Vikal Vs. A.L.Chopra (AIR 1978 SC 986), wherein it has been held as follows:

"It would thus appear that the appellant was entitled to the benefit of sub-section (1) of Section 468 which prohibits every Court from taking cognizance of an offence of the category specified in subsection (2) after the expiry of the period of limitation. It is hardly necessary to say that statutes of limitation have legislative police behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated, a bar to the taking of cognizance has been prescribed under Section 468 of the Cr.P.C and there is no reason why the appellant should not be entitled to it in the facts and circumstances of this case."

28. In continuance to the above cited decision, there is also another decision reported in State of Punjab Vs. Sarwan Sing (AIR 1981 SC 1 054) wherein it has been held as follows:

"The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art.21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant, must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation, the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein is non est."

29. So, following the principles if really the complainant as well as the Court feel that there was only a short period for the lapse of the period of limitation, the Magistrate should have been more diligent in checking those papers and examining the witnesses even on the very next day or a day after. But here in this case, the matter has slept over for a period of six months. Likewise, the complainant also could have filed a memo or a petition before the Magistrate explaining the circumstances as to why it had taken so long for him to file the complaint (2 years and 11 ½ months). Though it is within the time and requesting the Court to pass an order within the period of limitation and if the Magistrate has not done so, he could have very well taken up the issue even for condoning the delay. But however, no such efforts had been taken by the complainant.

30. Here, I would like to refer to the observations made in the judgment reported in Kathamuthu Vs. Balammal (1987 CrL. L.J. 360), wherein their Lordships has held that the general rule of limitation is contained in the Latin maxims "Vigilantibus et non, Dormientibus Jura Subveniunt", meaning "the vigilant, and not the sleepy, are assisted by the laws". In other words, in all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff is favoured to the prejudice of the person who is careless. The complainant having filed for damages against the petitioners on 30.11.1994, could have filed the complaint also in 1994 but has waited till 27.11.1996.

31. For the foregoing reasons, I hold that the prosecution is barred by limitation. Consequently, I have no hesitation to quash the proceedings in C.C.No.3354 of 1997 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai without going into the merits of the case. Consequently, connected CrL.M.P is closed.

csh

17-07-2002

Index:Yes.

Internet:Yes

A. PACKIARAJ, J.

Order in

CrL.O.P.No.12001 OF 1997

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